

TEXAS OIL AND GAS CORP.

IBLA 81-710

Decided February 4, 1982

Appeal from decisions of California State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers for acquired lands. CA 5812, et al.

Reversed and remanded.

1. Applications and Entries: Filing--Oil and Gas Leases: Acquired Lands
Leases--Oil and Gas Leases: Applications: Filing--Oil and Gas
Leases: Noncompetitive Leases

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

APPEARANCES: Stephen C. Haworth, Esq., Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

The Texas Oil and Gas Corporation has appealed from two decisions of the California State Office, Bureau of Land Management (BLM), dated May 6 and 13, 1981, rejecting its noncompetitive oil and gas lease offers for acquired lands. 1/ The basis for the decisions was appellant's failure to submit an "exact reproduction" of the official, approved form for lease offers, "without additions, omissions or other changes," as required by 43 CFR 3111.1-2.

1/ The following lease offer was the subject of the May 6, 1981, BLM decision: CA 5919. The following lease offers were the subject of the May 13, 1981, BLM decision: CA 5812 through CA 5815, CA 5817, CA 5819, CA 5820, CA 5822, CA 5823, CA 5827 through CA 5831, CA 5904 through CA 5918, CA 5953 through CA 5961.

Between January 25, 1979, and February 26, 1979, appellant submitted copies of form 3110-3 (March 1978), entitled "Offer to Lease and Lease for Oil and Gas Noncompetitive Acquired Lands Lease," for land situated in Monterey County, California. In rejecting these lease offers, BLM relied on the fact that appellant, in duplicating the approved form, failed to use yellow paper, which was the color paper used for the approved form "to differentiate" it from the form used for noncompetitive oil and gas lease offers for the public domain. In addition, in its May 13, 1981, decision, BLM indicated that "many" of the offers had the words "[t]his form reproduced by Texas Oil & Gas Corp." typed on their face. BLM stated that the regulation, 43 CFR 3111.1-2, "prohibits additions of any kind to the official form."

In its statement of reasons for appeal, appellant contends that its lease offers were exact reproductions of the approved form because they were identical in form and content. Appellant also argues that 43 CFR 3111.1-2 does not require that the form for noncompetitive acquired lands lease offers "must be reproduced only on yellow paper" and that the failure to use yellow paper "worked no hardship or confusion upon BLM in distinguishing the subject acquired lands lease offers from public domain lease offers." With respect to the additional words on the form, appellant argues that they were intended only to disclose that a copy of the approved form was being used and that they "did not alter or amend the substantive provisions of the lease offer." Finally, appellant argues that, to the extent the lease offers were defective, the defect should be treated as "curable," pursuant to 43 CFR 3111.1-1(e).

[1] The applicable regulation, 43 CFR 3111.1-2(a)(1), provides that

an offer to lease must be made on a form approved by the Director, "Offer to Lease and Lease for Oil and Gas; Non-competitive Acquired Lands" or unofficial copies of that form in current use: Provided, That the copies are exact reproductions of one page of both sides of the official approved one-page form and are without additions, omissions, or other changes or advertising.

At one time the Department did not require the use of an approved form; 2/ however, in 1950 the Department promulgated a regulation, 43 CFR 192.42, similar in content to 43 CFR 3111.1-2(a)(1), requiring offers to be filed on a particular form or on exact reproductions of that form. 3/ In explanation of the change the Department stated:

2/ See, e.g., 43 CFR 192.23 (1940).

3/ The regulation read:

"To obtain a noncompetitive lease, an offer to accept such a lease must be made on Form 4-1158, 'Offer and Lease Form', or on unofficial

The following amendments and revision of certain sections of Part 192 are made necessary by a change from the present practice of issuing a noncompetitive lease on a form separate and distinct from the lease application, to a procedure by which a standardized noncompetitive oil and gas lease offer form becomes a lease when signed on behalf of the United States.

15 FR 8582 (Dec. 5, 1950).

Consequently, the reason for exact reproductions was, and continues to be, that the offer itself, when approved, becomes the lease. It is essential, therefore, that a copy of the approved form contain all of the language of the original. ^{4/} It is in this manner that the words "exact reproductions" must be interpreted. Accordingly, we have held that an applicant has not complied with 43 CFR 3111.1-2(a) where he has only copied one side of the approved form, Duncan Miller, 7 IBLA 169 (1972), ^{5/} or where the approved form for public domain lease offers was used instead of the approved form for acquired lands lease offers. Frederick G. Holl, 18 IBLA 145 (1974).

There is no doubt that the use of yellow paper in the approved form for acquired lands lease offers distinguishes such offers from public domain lease offers, and presumably, such a distinction facilitates the administrative processing of such offers. However, a noncompetitive oil and gas lease offer for acquired lands on a form, identical in all respects to the approved form, except for the selection of the

fn. 3 (continued)

copies of that form in current use, provided that the copies are exact reproductions on one page of both sides of the official approved one page form, and are without additions, omissions, or other changes or advertising, except that the copies shall include the following statement above the signature of the offeror: "This form is submitted in lieu of official Form 4-1158 and contains all of the provisions thereof as of the date of filing of this offer."

43 CFR 192.42 (15 FR 8583 (Dec. 5, 1950)).

^{4/} We note that failure to reproduce correctly the approved form is a "curable defect" as long as the copy "contains the statement that the offeror agrees to be bound by the terms and conditions of the lease form in effect at the date of filing." 43 CFR 3111.1-1(e)(4). This provision is made applicable to acquired lands lease offers by 43 CFR 3111.1-2(a)(7).

^{5/} This case involved a public domain lease offer. The regulations regarding public domain and acquired lands lease offers, however, are identical in respect to the use of an approved application form. See 43 CFR 3111.1-1(a).

color of the paper, must be considered an "exact reproduction." The selection of white paper rather than yellow cannot serve as a basis for rejection of such an offer. What is critical to the offer is the language, not the color of the paper. Despite the fact that the official form in this case is yellow, the regulations make no specific requirement for reproduction on yellow paper. Absent such a requirement, rejection on such a basis must be considered unreasonable and improper.

Also, the addition to a copy of the approved form of words which do not alter the language of the official form but merely indicate that it is, in fact, a reproduction, are not "additions, omissions, or other changes" within the meaning of the regulation and should not result in rejection of the lease offer. We note that under a prior regulation, 43 CFR 192.42 (15 FR 8583 (Dec. 5, 1950)), the offeror was required to include a statement on the "exact reproduction" that it was being submitted "in lieu of" the official form. See n.3, supra. Accordingly, the addition of the words used by appellant, which merely indicated that a copy of the approved form was being filed, is not a proper reason for BLM to reject the lease offers.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed and the case remanded to BLM for further action consistent herewith.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

